IN THE HIGH COURT OF UTTARAKHAND ATNAINITAL

Writ Petition No. 460 of 2007 (M/S)

Harish Kumar S/O Shri Shyam Lal R/O Subhash Colony, Gali No. 6, Rudrapur through Juneja Juice Corner, Near Bus Station, Rudrapur, District Udham Singh Nagar.

....Petitioner.

Versus

Smt. Sunita Juneja W/O Shri Harish Kumar, D/O Late Shri Sher Chandra Tajena through Kishan Chandra Tajeja near Tehsil Gadarpur, Old Ward No. 19 New Ward No. 4, Gadarpur, District Udham Singh Nagar.

…..Respondent.

Sri Lalit Sharma, learned counsel for the petitioner.

Dated May 18, 2007.

Hon'ble B.S.Verma, J.

The petitioner has filed the present writ petition to issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 23-4-2007 passed by Judge, Family Court, Udham Singh Nagar in Misc. Case No. 19 of 2005 Smt. Sunita Juneja Vs. Harish Kumar, whereby the application under Section 5 of the Limitation Act moved by the respondent along with application under Order 9, Rule 13 of the C.P.C. arising out of Original Suit No. 100 of 2003, Harish Kumar Vs. Sunita Juneja has been allowed.

It is not disputed that the Original Suit No. 100 of 2003 was decided ex-part vide judgment and decree dated 21-11-2003, whereby the marriage between the parties was dissolved by a decree of divorce by the Judge, Family Court, Udham Singh Nagar and the application under Order 9, Rule 13 C.P.C. for setting aside the ex-parte decree is yet to be decided.

The petitioner may file objection regarding the maintainability of the application under Order 9, Rule 13 C.P.C. before the Judge, Family Court.

It has been contended by the learned counsel for the petitioner that the order allowing the application under Section 5 of the Limitation Act passed by the Judge, Family Court is not sustainable. I am not inclined to accept the contention of the learned counsel on this point. It is settled law that the power to condone delay is the discretionary power of the Court and the same is to be liberally construed as has been held by the Apex Court in the case of ***Apangshu Mohan Lodh and others Vs. State of Tripura and others [(2004) 1 Supreme Court Cases, 119].***

The learned counsel for the petitioner has relied upon the case of ***Surendra Kumar Vs. Kiran Devi [AIR, 1997, Rajasthan, 63],*** wherein it has been held that after passing of ex parte decree of divorce in favour of husband, if the husband had contracted second marriage after four months, application by wife thereafter for setting aside ex parte decree is not maintainable. The learned counsel for the petitioner may argue this ground regarding maintainability of application under Order 9, Rule 13 C.P.C. before the Judge, Family Court at the time of hearing. The Judge, Family Court shall decide the application under Order 9, Rule 13 C.P.C. after hearing the petitioner.

The learned Judge, Family Court has not committed any manifest error of law in passing the impugned order dated 23-4-2007. The writ petition being devoid of merit is liable to be dismissed at the threshold.

The writ petition is disposed of limine.

All applications stand disposed of.

(B.S. Verma, J.)

RCP